

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 1210, 1244 & 844

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Offered April 5, 2006.

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TERRY L. SPIELER, Secretary.

5340S.06P

AN ACT

To repeal sections 191.900, 191.905, and 191.910, RSMo, and to enact in lieu thereof eight new sections relating to Medicaid fraud, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.900, 191.905, and 191.910, RSMo, are repealed
2 and eight new sections enacted in lieu thereof, to be known as sections 191.900,
3 191.905, 191.907, 191.908, 191.909, 191.910, 191.914, and 1, to read as follows:
191.900. As used in sections 191.900 to 191.910, the following terms
2 mean:

3 (1) "Abuse", the infliction of physical, sexual or emotional harm or
4 injury. "Abuse" includes the taking, obtaining, using, transferring, concealing,
5 appropriating or taking possession of property of another person without such
6 person's consent;

7 (2) "Claim", any attempt to cause a health care payer to make a health
8 care payment;

9 (3) "False", wholly or partially untrue. A false statement or false
10 representation of a material fact means the failure to reveal material facts in a
11 manner which is intended to deceive a health care payer with respect to a claim;

12 (4) "Health care", any service, assistance, care, product, device or thing

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 provided pursuant to a medical assistance program, or for which payment is
14 requested or received, in whole or part, pursuant to a medical assistance
15 program;

16 (5) "Health care payer", a medical assistance program, or any person
17 reviewing, adjusting, approving or otherwise handling claims for health care on
18 behalf of or in connection with a medical assistance program;

19 (6) "Health care payment", a payment made, or the right under a medical
20 assistance program to have a payment made, by a health care payer for a health
21 care service;

22 (7) "Health care provider", any person delivering, or purporting to deliver,
23 any health care, and including any employee, agent or other representative of
24 such a person;

25 (8) "**Knowing**" and "**knowingly**", that a person, with respect to
26 **information:**

27 (a) **Has actual knowledge of the information;**

28 (b) **Acts in deliberate ignorance of the truth or falsity of the**
29 **information; or**

30 (c) **Acts in reckless disregard of the truth or falsity of the**
31 **information;**

32 (9) "Medical assistance program", any program to provide or finance
33 health care to recipients which is established pursuant to title 42 of the United
34 States Code, any successor federal health insurance program, or a waiver granted
35 thereunder. A medical assistance program may be funded either solely by state
36 funds or by state and federal funds jointly. The term "medical assistance
37 program" shall include the medical assistance program provided by section
38 208.151, RSMo, et seq., and any state agency or agencies administering all or any
39 part of such a program;

40 [(9)] (10) "Person", a natural person, corporation, partnership,
41 association or any legal entity.

191.905. 1. No health care provider shall knowingly make or cause to be
2 made a false statement or false representation of a material fact in order to
3 receive a health care payment, including but not limited to:

4 (1) Knowingly presenting to a health care payer a claim for a health care
5 payment that falsely represents that the health care for which the health care
6 payment is claimed was medically necessary, if in fact it was not;

7 (2) Knowingly concealing the occurrence of any event affecting an initial

8 or continued right under a medical assistance program to have a health care
9 payment made by a health care payer for providing health care;

10 (3) Knowingly concealing or failing to disclose any information with the
11 intent to obtain a health care payment to which the health care provider or any
12 other health care provider is not entitled, or to obtain a health care payment in
13 an amount greater than that which the health care provider or any other health
14 care provider is entitled;

15 (4) Knowingly presenting a claim to a health care payer that falsely
16 indicates that any particular health care was provided to a person or persons, if
17 in fact health care of lesser value than that described in the claim was provided.

18 2. No person shall knowingly solicit or receive any remuneration,
19 including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,
20 in cash or in kind in return for:

21 (1) Referring another person to a health care provider for the furnishing
22 or arranging for the furnishing of any health care; or

23 (2) Purchasing, leasing, ordering or arranging for or recommending
24 purchasing, leasing or ordering any health care.

25 3. No person shall knowingly offer or pay any remuneration, including any
26 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in
27 kind, to any person to induce such person to refer another person to a health care
28 provider for the furnishing or arranging for the furnishing of any health care.

29 4. Subsections 2 and 3 of this section shall not apply to a discount or
30 other reduction in price obtained by a health care provider if the reduction in
31 price is properly disclosed and appropriately reflected in the claim made by the
32 health care provider to the health care payer, or any amount paid by an employer
33 to an employee for employment in the provision of health care.

34 5. Exceptions to the provisions of subsections 2 and 3 of this subsection
35 shall be provided for as authorized in 42 U.S.C. Section 1320a-7b(3)(E), as may
36 be from time to time amended, and regulations promulgated pursuant thereto.

37 6. No person shall knowingly abuse a person receiving health care.

38 7. A person who violates subsections 1 to [4] 3 of this section is guilty of
39 a class [D] C felony upon his **or her** first conviction, and shall be guilty of a class
40 [C] B felony upon his **or her** second and subsequent convictions, **and any**
41 **natural person who has been convicted of such violations forever shall**
42 **be excluded from participation as a provider for the medical assistance**
43 **program.** A prior conviction shall be pleaded and proven as provided by section

44 558.021, RSMo. A person who violates subsection 6 of this section shall be guilty
45 of a class C felony, unless the act involves no physical, sexual or emotional harm
46 or injury and the value of the property involved is less than five hundred dollars,
47 in which event a violation of subsection 6 of this section is a class A
48 misdemeanor. **No person convicted of a violation of subsections 1 to 3 of**
49 **this section shall be eligible for parole, probation, conditional release,**
50 **or suspended imposition or execution of sentence until he or she has**
51 **served at least eighty-five percent of any term of imprisonment ordered**
52 **as punishment, if such violation results in a total loss in excess of fifty**
53 **thousand dollars. In no event shall an individual receive a suspended**
54 **imposition of sentence for any violation of subsections 1 to 3 of this**
55 **section that results in a total loss in excess of ten thousand dollars. If**
56 **a person receives a suspended imposition of sentence for a violation of**
57 **subsection 1 to 3 of this section, then such person shall not receive a**
58 **suspended imposition of sentence for any subsequent violation of**
59 **subsection 1 to 3 of this section, regardless of the dollar amount of the**
60 **total loss from such violation.**

61 **8. Any natural person who willfully prevents, obstructs, misleads,**
62 **delays, or attempts to prevent, obstruct, mislead, or delay the**
63 **communication of information or records relating to a violation of**
64 **sections 191.900 to 191.910 shall be guilty of a class D felony, and, upon**
65 **conviction, forever shall be excluded from participation as a provider**
66 **for the medical assistance program.**

67 **[8.] 9.** Each separate false statement or false representation of a material
68 fact proscribed by subsection 1 of this section or act proscribed by subsection 2
69 or 3 of this section shall constitute a separate offense and a separate violation of
70 this section, whether or not made at the same or different times, as part of the
71 same or separate episodes, as part of the same scheme or course of conduct, or as
72 part of the same claim.

73 **[9.] 10.** In a prosecution pursuant to subsection 1 of this section,
74 circumstantial evidence may be presented to demonstrate that a false statement
75 or claim was knowingly made. Such evidence of knowledge may include but shall
76 not be limited to the following:

77 (1) A claim for a health care payment submitted with the health care
78 provider's actual, facsimile, stamped, typewritten or similar signature on the
79 claim for health care payment;

80 (2) A claim for a health care payment submitted by means of computer
81 billing tapes or other electronic means;

82 (3) A course of conduct involving other false claims submitted to this or
83 any other health care payer.

84 [10.] 11. Any person convicted of a violation of this section, in addition
85 to any fines, penalties or sentences imposed by law, shall be required to make
86 restitution to the federal and state governments, in an amount at least equal to
87 that unlawfully paid to or by the person, and shall be required to reimburse the
88 reasonable costs attributable to the investigation and prosecution pursuant to
89 sections 191.900 to 191.910. All of such restitution shall be paid and deposited
90 to the credit of the "Medicaid Fraud Reimbursement Fund", which is hereby
91 established in the state treasury. Moneys in the Medicaid fraud reimbursement
92 fund shall be divided and appropriated to the federal government and affected
93 state agencies in order to refund moneys falsely obtained from the federal and
94 state governments. All of such cost reimbursements attributable to the
95 investigation and prosecution shall be paid and deposited to the credit of the
96 "Medicaid Fraud Prosecution Revolving Fund", which is hereby established in the
97 state treasury. Moneys in the Medicaid fraud prosecution revolving fund may be
98 appropriated to the attorney general, or to any prosecuting or circuit attorney
99 who has successfully prosecuted an action for a violation of sections 191.900 to
100 191.910 and been awarded such costs of prosecution, in order to defray the costs
101 of the attorney general and any such prosecuting or circuit attorney in connection
102 with their duties provided by sections 191.900 to 191.910. No moneys shall be
103 paid into the Medicaid fraud protection revolving fund pursuant to this
104 subsection unless the attorney general or appropriate prosecuting or circuit
105 attorney shall have commenced a prosecution pursuant to this section, and the
106 court finds in its discretion that payment of attorneys' fees and investigative costs
107 is appropriate under all the circumstances, and the attorney general and
108 prosecuting or circuit attorney shall prove to the court those expenses which were
109 reasonable and necessary to the investigation and prosecution of such case, and
110 the court approves such expenses as being reasonable and necessary. The
111 provisions of section 33.080, RSMo, notwithstanding, moneys in the Medicaid
112 fraud prosecution revolving fund shall not lapse at the end of the biennium.

113 [11.] 12. A person who violates subsections 1 to [4] 3 of this section shall
114 be liable for a civil penalty of not less than five thousand dollars and not more
115 than ten thousand dollars for each separate act in violation of such subsections,

116 plus three times the amount of damages which the state and federal government
117 sustained because of the act of that person, except that the court may assess not
118 more than two times the amount of damages which the state and federal
119 government sustained because of the act of the person, if the court finds:

120 (1) The person committing the violation of this section furnished
121 personnel employed by the attorney general and responsible for investigating
122 violations of sections 191.900 to 191.910 with all information known to such
123 person about the violation within thirty days after the date on which the
124 defendant first obtained the information;

125 (2) Such person fully cooperated with any government investigation of
126 such violation; and

127 (3) At the time such person furnished the personnel of the attorney
128 general with the information about the violation, no criminal prosecution, civil
129 action, or administrative action had commenced with respect to such violation,
130 and the person did not have actual knowledge of the existence of an investigation
131 into such violation.

132 [12.] 13. Upon conviction pursuant to this section, the prosecution
133 authority shall provide written notification of the conviction to all regulatory or
134 disciplinary agencies with authority over the conduct of the defendant health care
135 provider.

136 [13.] 14. The attorney general may bring a civil action against any
137 person who shall receive a health care payment as a result of a false statement
138 or false representation of a material fact made or caused to be made by that
139 person. The person shall be liable for up to double the amount of all payments
140 received by that person based upon the false statement or false representation of
141 a material fact, and the reasonable costs attributable to the prosecution of the
142 civil action. All such restitution shall be paid and deposited to the credit of the
143 Medicaid fraud reimbursement fund, and all such cost reimbursements shall be
144 paid and deposited to the credit of the Medicaid fraud prosecution revolving fund.
145 No reimbursement of such costs attributable to the prosecution of the civil action
146 shall be made or allowed except with the approval of the court having jurisdiction
147 of the civil action. No civil action provided by this subsection shall be brought if
148 restitution and civil penalties provided by subsections 10 and 11 of this section
149 have been previously ordered against the person for the same cause of action.

191.907. 1. Any person may bring a civil action in the name of
2 the state to recover losses that the state suffers from a violation of

3 sections 191.900 to 191.910. In an action brought under this section, a
4 person who violates subsection 1 to 3 of section 191.905 is liable as
5 provided by subsection 11 of section 191.905. The amount of any civil
6 penalty assessed by the court under this section shall be reduced by the
7 amount of any civil monetary penalty which the person establishes that
8 he or she has paid under the laws of the United States for a violation
9 of 31 U.S.C. section 3729, et seq., as long as such violation is based on
10 the same underlying facts upon which the state action was brought. At
11 the time of filing the complaint, the person shall deliver a copy of the
12 complaint and written disclosure of all material evidence and
13 information the person possesses to the state attorney general. The
14 complaint shall be filed in camera, shall remain under seal for at least
15 one hundred and twenty days, and shall not be served upon the
16 defendant until the court so orders. The attorney general may elect to
17 intervene and proceed with the action within sixty days after it
18 receives both the complaint and the material evidence and
19 information. During the period in which the complaint is under seal,
20 the attorney general may elect to initiate discussions with the accused
21 provider in an attempt to facilitate a resolution of the claim prior to
22 the commencement of judicial proceedings.

23 2. The attorney general may, for good cause shown, move the
24 court for an extension of the time during which the complaint remains
25 under seal, as provided by subsection 1 of this section. Any such
26 motion may be supported by affidavits or other submissions in camera.

27 3. Before the expiration of the one hundred and twenty day
28 period or any extensions obtained under subsection 2 of this section,
29 the attorney general shall:

30 (1) Notify the court and the person initiating the action that it
31 will proceed with the action, in which case the action shall be
32 conducted by the attorney general; or

33 (2) Notify the court that it declines to take over the action, in
34 which case the action shall be dismissed, notwithstanding any objection
35 by the person initiating the action.

36 4. When a person files an action under this section, no person
37 other than the attorney general shall intervene or bring a related
38 action based on the facts underlying the pending action.

39 5. If the attorney general elects to proceed with the action, he or

40 she shall have the primary responsibility for conducting the action, and
41 shall not be bound by any act of the person initiating the action. Such
42 person shall have the right to continue as a party to the action, subject
43 to the limitations set forth in subsection 8 of this section.

44 6. The attorney general may voluntarily dismiss the action
45 notwithstanding the objections of the person initiating the action, but
46 only if that person has been notified of and offered the opportunity to
47 participate in a hearing on the motion to dismiss.

48 7. The attorney general may settle the action, notwithstanding
49 the objections of the person initiating the action, but only if that
50 person has been notified of and offered the opportunity to participate
51 in a hearing on the settlement, and if the court determines that the
52 settlement is fair, adequate, and reasonable under the circumstances.

53 8. Upon a showing by the attorney general that unrestricted
54 participation during the course of the litigation by the person initiating
55 the action would interfere with or unduly delay the attorney general's
56 prosecution of the case, or would be repetitious, irrelevant, or unduly
57 harassing, the court may, in its discretion, impose limitations on the
58 person's participation, such as:

- 59 (1) Limiting the number of witnesses the person may call;
60 (2) Limiting the length of the testimony of witnesses;
61 (3) Limiting the person's cross-examination of witnesses; or
62 (4) Otherwise limiting the participation by the person in the
63 litigation.

64 Upon a showing by the defendant that unrestricted participation
65 during the course of the litigation by the person initiating the action
66 would be unduly harassing, or would cause the defendant undue
67 burden or unnecessary expense, the court may limit the participation
68 by the person in the litigation.

69 9. Upon a showing, conducted in camera, that actions of the
70 person initiating the action during discovery would interfere with the
71 attorney general's investigation or prosecution of a criminal or civil
72 matter, the court may stay the discovery by the person initiating the
73 action for not more than sixty days. The court may extend the stay
74 upon a further showing that the attorney general is pursuing the
75 investigation or proceeding with reasonable diligence and the
76 discovery would interfere with the ongoing investigation or proceeding.

77 **10. As an alternative to an action authorized by this section, the**
78 **attorney general may pursue a violation of sections 191.900 to 191.910**
79 **through any alternate proceeding available to this state. If the**
80 **attorney general pursues an alternate proceeding, a person who**
81 **initiated an action under this section shall have equivalent rights in**
82 **that proceeding to the rights that the person would have had if the**
83 **action had continued under this section. Findings of fact and**
84 **conclusions of law that become final in an alternative proceeding shall**
85 **become conclusive on the parties to an action under this section. For**
86 **the purposes of this subsection, a finding or conclusion is final if it has**
87 **been finally determined on appeal to the appropriate court, if the time**
88 **for filing an appeal with respect to the finding or conclusion has**
89 **expired, or if the finding or conclusion is not subject to judicial review.**

90 **11. If the parties to an action filed under this section prevail in**
91 **the action, the court shall award the person who initiated such action**
92 **necessary expenses, costs, and, based on the amount of effort involved,**
93 **the court shall award such person twenty to thirty-five percent of the**
94 **monetary proceeds resulting from the action or any settlement of the**
95 **claim.**

96 **12. If the court finds an action under this section to be based**
97 **primarily on disclosure of specific information that was not provided**
98 **by the person initiating the action, such as information from a criminal,**
99 **civil, or administrative hearing in a state or federal department or**
100 **agency, a legislative report, hearing, audit, or investigation, or the**
101 **news media, and the attorney general proceeds with the action, the**
102 **court shall award the person initiating the action no more than fifteen**
103 **percent of the monetary recovery in addition to reasonable attorney's**
104 **fees, necessary expenses, and costs.**

105 **13. If the court finds that the person initiating an action under**
106 **this section planned, initiated, or participated in the conduct upon**
107 **which the action is brought, the court may reduce or eliminate, as it**
108 **considers appropriate, the share of the proceeds of the action that the**
109 **person would otherwise be entitled to receive. A person who is**
110 **convicted of criminal conduct arising from a violation of sections**
111 **191.900 to 191.910 shall not initiate or remain a party to an action**
112 **under this section and is not entitled to share in the monetary proceeds**
113 **resulting from the action or any settlement under this section.**

114 **14. A person other than the attorney general shall not bring an**
115 **action under this section that is based on allegations or transactions**
116 **that are already the subject of a civil suit, criminal investigation or**
117 **prosecution, or an administrative investigation or proceeding to which**
118 **the state or the federal government is already a party. The court shall**
119 **dismiss an action brought in violation of this subsection.**

120 **15. Unless the person is the original source of the information,**
121 **a person, other than the attorney general, shall not initiate an action**
122 **under this section based on the public disclosure of allegations or**
123 **transactions in a criminal, civil, or administrative hearing in a state or**
124 **federal department or agency, a legislative report, hearing, audit, or**
125 **investigation, or the news media. The person is the original source if**
126 **he or she had direct and independent knowledge of the information on**
127 **which the allegations are based and voluntarily provided the**
128 **information to the attorney general as part of the filing of an action**
129 **based on that information under this section.**

130 **16. The attorney general shall not be liable for any expenses,**
131 **costs, or attorney's fees that a person incurs in bringing an action**
132 **under this section. Any amount awarded to a person initiating an**
133 **action to enforce sections 191.900 to 191.910 is payable solely from the**
134 **proceeds of the action or settlement.**

135 **17. If the attorney general initiates an action for a violation of**
136 **sections 191.900 to 191.910, or assumes control of an action initiated by**
137 **a person under this section, the attorney general shall be awarded its**
138 **reasonable attorney's fees, expenses, and costs.**

139 **18. The attorney general shall establish guidelines for enforcing**
140 **and implementing the provisions of this section. Such guidelines shall**
141 **be modeled upon the standards established by the "Guidance on the Use**
142 **of the Civil False Claims Act in Civil Health Care Matters" issued by the**
143 **United States Department of Justice on June 3, 1998, including any**
144 **revisions to the standards. In developing such guidelines, the attorney**
145 **general may solicit comments from health care providers.**

146 **19. Venue for an action brought under this section shall be in**
147 **Cole County.**

148 **20. An action brought under this section shall not be brought**
149 **more than five years after the date on which the violation was**
150 **committed.**

151 **21. Nothing within this section shall be deemed to alter the**
152 **statutes of limitations provided in section 516.105, RSMo, or section**
153 **537.100, RSMo.**

191.908. 1. An employer shall not discharge, demote, suspend,
2 **threaten, harass, or otherwise discriminate against an employee in the**
3 **terms and conditions of employment because the employee initiates,**
4 **assists in, or participates in a proceeding or court action under section**
5 **191.900 to 191.910. Such prohibition shall not apply to an employment**
6 **action against an employee who:**

7 **(1) The court finds brought a frivolous or clearly vexatious**
8 **claim;**

9 **(2) The court finds to have planned, initiated, or participated in**
10 **the conduct upon which the action is brought; or**

11 **(3) Is convicted of criminal conduct arising from a violation of**
12 **sections 191.900 to 191.910.**

13 **2. An employer who violates this section is liable to the employee**
14 **for all of the following:**

15 **(1) Reinstatement to the employee's position without loss of**
16 **seniority;**

17 **(2) Two times the amount of lost back pay;**

18 **(3) Interest on the back pay;**

19 **(4) Compensation for any special damages;**

20 **(5) Any other relief necessary to make an employee whole.**

191.909. 1. By January 1, 2007, and annually thereafter, the
2 **attorney general's office shall report to the general assembly and the**
3 **governor the following:**

4 **(1) The number of provider investigations due to allegations of**
5 **violations under sections 191.900 to 191.910 conducted by the attorney**
6 **general's office and completed within the reporting year, including the**
7 **age and type of cases;**

8 **(2) The number of referrals due to allegations of violations under**
9 **sections 191.900 to 191.910 received by the attorney general's office;**

10 **(3) The total amount of overpayments identified as the result of**
11 **completed investigations;**

12 **(4) The amount of fines and restitutions ordered to be**
13 **reimbursed, with a delineation between amounts the provider has been**
14 **ordered to repay, including whether or not such repayment will be**

15 completed in a lump sum payment or installment payments, and any
16 adjustments or deductions ordered to future provider payments;

17 (5) The total amount of monetary recovery as the result of
18 completed investigations;

19 (6) The total number of arrests, indictments, and convictions as
20 the result of completed investigations.

21 An annual financial audit of the Medicaid fraud unit within the
22 attorney general's office shall be conducted and completed by the state
23 auditor in order to quantitatively determine the amount of money
24 invested in the unit and the amount of money actually recovered by
25 such office.

26 2. By January 1, 2007, and annually thereafter, the department
27 of social services shall report to the general assembly and the governor
28 the following:

29 (1) The number of medicaid provider and recipient
30 investigations and audits relating to allegations of violations under
31 sections 191.900 to 191.910 completed within the reporting year,
32 including the age and type of cases;

33 (2) Number of medicaid long-term care facility reviews;

34 (3) Number of medicaid provider and recipient utilization
35 reviews;

36 (4) The number of referrals sent by the department to the
37 attorney general's office;

38 (5) The total amount of overpayments identified as the result of
39 completed investigations, reviews, or audits;

40 (6) The amount of fines and restitutions ordered to be
41 reimbursed, with a delineation between amounts the provider has been
42 ordered to repay, including whether or not such repayment will be
43 completed in a lump sum payment or installment payments, and any
44 adjustments or deductions ordered to future provider payments;

45 (7) The total amount of monetary recovery as the result of
46 completed investigation, reviews, or audits;

47 (8) The number of administrative sanctions against medicaid
48 providers, including the number of providers excluded from the
49 program.

50 An annual financial audit of the program integrity unit within the
51 department of social services shall be conducted and completed by the

52 **state auditor in order to quantitatively determine the amount of money**
53 **invested in the unit and the amount of money actually recovered by**
54 **such office.**

191.910. 1. The attorney general shall have authority to investigate
2 alleged or suspected violations of sections 191.900 to 191.910, and shall have all
3 powers provided by sections 407.040 to 407.090, RSMo, in connection with
4 investigations of alleged or suspected violations of sections 191.900 to 191.910,
5 as if the acts enumerated in subsections 1 to 3 of section 191.905 are unlawful
6 acts proscribed by chapter 407, RSMo, provided that if the attorney general
7 exercises such powers, the provisions of section 407.070, RSMo, shall also be
8 applicable; **and may exercise all of the powers provided by sections**
9 **542.271 to 542.296, RSMo, in connection with investigations of alleged**
10 **suspected violations of sections 191.900 to 191.910;** and may exercise all of
11 the powers provided by subsections 1 and 2 of section 578.387, RSMo, in
12 connection with investigations of alleged or suspected violations of sections
13 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section
14 191.905 involve "public assistance" as defined by section 578.375, RSMo. The
15 attorney general and his **or her** authorized investigators shall be authorized to
16 serve all subpoenas and civil process related to the enforcement of sections
17 191.900 to 191.910 and chapter 407, RSMo. [In order for the attorney general to
18 commence a state prosecution] For violations of sections 191.900 to 191.910, the
19 attorney general shall prepare and forward a report of the violations to the
20 appropriate prosecuting attorney. Upon receiving a referral, the prosecuting
21 attorney shall either commence a prosecution based on the report by the filing of
22 a complaint, information, or indictment within sixty days of receipt of said report
23 or shall file a written statement with the attorney general explaining why
24 criminal charges should not be brought. This time period may be extended by the
25 prosecuting attorney with the agreement of the attorney general for an additional
26 sixty days. If the prosecuting attorney commences a criminal prosecution, the
27 attorney general or his designee shall be permitted by the court to participate as
28 a special assistant prosecuting attorney in settlement negotiations and all court
29 proceedings, subject to the authority of the prosecuting attorney, for the purpose
30 of providing such assistance as may be necessary. If the prosecuting attorney
31 fails to commence a prosecution and fails to file a written statement listing the
32 reasons why criminal charges should not be brought within the appropriate time
33 period, or declines to prosecute on the basis of inadequate office resources, the

34 attorney general shall have authority to commence prosecutions for violations of
35 sections 191.900 to 191.910. In cases where a defendant pursuant to a common
36 scheme or plan has committed acts which constitute or would constitute violations
37 of sections 191.900 to 191.910 in more than one state, the attorney general shall
38 have the authority to represent the state of Missouri in any plea agreement which
39 resolves all criminal prosecutions within and without the state, and such
40 agreement shall be binding on all state prosecutors.

41 2. In any investigation, hearing or other proceeding pursuant to sections
42 191.900 to 191.910, any record in the possession or control of a health care
43 provider, or in the possession or control of another person on behalf of a health
44 care provider, including but not limited to any record relating to patient care,
45 business or accounting records, payroll records and tax records, whether written
46 or in an electronic format, shall be made available by the health care provider to
47 the attorney general or the court, and shall be admissible into evidence,
48 regardless of any statutory or common law privilege which such health care
49 provider, record custodian or patient might otherwise invoke or assert. The
50 provisions of section 326.151, RSMo, shall not apply to actions brought pursuant
51 to sections 191.900 to 191.910. The attorney general shall not disclose any record
52 obtained pursuant to this section, other than in connection with a proceeding
53 instituted or pending in any court or administrative agency. The access,
54 provision, use, and disclosure of records or material subject to the provisions of
55 42 U.S.C. section 290dd-2 shall be subject to said section, as may be amended
56 from time to time, and to regulations promulgated pursuant to said section.

57 3. **A health care provider shall maintain adequate records**
58 **necessary to fully disclose the nature of the health care for which a**
59 **claim was submitted or payment was received under a medical**
60 **assistance program, or such records as are necessary to fully disclose**
61 **all income and expenditures upon which rates of payment were based**
62 **under a medical assistance program. Upon submitting a claim for or**
63 **upon receiving payment for health care under a medical assistance**
64 **program, a health care provider shall maintain adequate records for at**
65 **least five years after the date on which payment was received, if**
66 **payment was received, or for five years after the date on which the**
67 **claim was submitted, if payment was not received. Any provider who**
68 **fails to maintain adequate records as provided by this subsection shall**
69 **be guilty of a class A misdemeanor.**

70 **4. No person knowingly shall destroy or conceal such records as**
71 **are necessary to fully disclose the nature of the health care for which**
72 **a claim was submitted or payment was received under a medical**
73 **assistance program, or such records as are necessary to fully disclose**
74 **all income and expenditures upon which rates of payment were based**
75 **under a medical assistance program. Upon submitting a claim for or**
76 **upon receiving payment for health care under a medical assistance**
77 **program, a person shall not destroy or conceal any records for five**
78 **years after the date on which payment was received, if payment was**
79 **received, or for five years after the date on which the claim was**
80 **submitted, if payment was not received. Any provider who knowingly**
81 **destroys or conceals such records shall be guilty of a class A**
82 **misdemeanor.**

83 **5.** Sections 191.900 to 191.910 shall not be construed to prohibit or limit
84 any other criminal or civil action against a health care provider for the violation
85 of any other law. Any complaint, investigation or report received or completed
86 pursuant to sections 198.070 and 198.090, RSMo, subsection 2 of section 205.967,
87 RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or sections
88 660.300 and 660.305, RSMo, which indicates a violation of sections 191.900 to
89 191.910, shall be referred to the attorney general. A referral to the attorney
90 general pursuant to this subsection shall not preclude the agencies charged with
91 enforcing the foregoing sections from conducting investigations, providing
92 protective services or taking administrative action regarding the complaint,
93 investigation or report referred to the attorney general, as may be provided by
94 such sections; provided that all material developed by the attorney general in the
95 course of an investigation pursuant to sections 191.900 to 191.910 shall not be
96 subject to subpoena, discovery, or other legal or administrative process in the
97 course of any such administrative action. Sections 191.900 to 191.910 take
98 precedence over the provisions of sections 198.070 and 198.090, RSMo, subsection
99 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387,
100 RSMo, and sections 660.300 and 660.305, RSMo, to the extent such provisions are
101 inconsistent or overlap.

191.914. 1. Any person who intentionally files a false report or
2 **claim alleging a violation of sections 191.900 to 191.910 shall be guilty**
3 **of a class A misdemeanor. Any person who previously has been**
4 **convicted of making a false report or claim under this section and who**

5 is subsequently convicted of making a false report or claim under this
6 section shall be guilty of a class D felony and shall be punished as
7 provided by law.

8 2. It shall be a class D felony for any person to receive any
9 compensation in exchange for knowingly failing to report any violation
10 of subsections 1 to 3 of section 191.905.

Section 1. 1. Beginning September 1, 2006, an advisory working
2 group is hereby created for the purpose of conducting a study to
3 determine whether an office of inspector general shall be
4 established. Such office would be responsible for oversight, auditing,
5 investigation, and performance review to provide increased
6 accountability, integrity, and oversight of state medical assistance
7 programs, to assist in improving agency and program operations, and
8 to deter identify fraud, abuse, and illegal acts. The working group shall
9 review the experience of all states that have created a similar office to
10 determine the impact of creating a similar office in this state. The
11 advisory working group shall consist of the following:

12 (1) Five members of the house of representatives appointed by
13 the speaker; and

14 (2) Five members of the senate appointed by the pro tem.

15 No more than three members from each house shall be of the same
16 political party. The directors of the department of social services, the
17 department of health and senior services, and the department of mental
18 health or the directors' designees shall serve as ex officio members of
19 the advisory working group.

20 2. Members of the advisory working group shall be reimbursed
21 for the actual and necessary expenses incurred in the discharge of the
22 member's official duties.

23 3. A chair of the advisory working group shall be selected by the
24 members of the advisory working group.

25 4. The advisory working group shall meet as necessary.

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